

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Surfside, FL, Employer**

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**Docket No. 17-1536  
Issued: December 5, 2017**

*Appearances:*

*Joanne M. Wright, for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 6, 2017 appellant, through his representative, filed a timely appeal from a June 16, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish a right shoulder injury due to factors of his federal employment.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 29, 2015 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a right shoulder condition in the form of a rotator cuff tear due to performing his work duties as a letter carrier over a period of time.<sup>3</sup> He indicated that he had engaged in repetitive motions on a daily basis for the past 33¾ years while working as a letter carrier. Appellant advised that he first reported his right shoulder pain when he previously filed a separate claim for an alleged August 18, 2007 right shoulder injury (under OWCP File No. xxxxxx964),<sup>4</sup> and indicated that he continued to experience right shoulder pain consistent with a right rotator cuff tear when casing mail, lifting, and otherwise reaching out with his arms. Section 11 of the form asks the claimant to provide the date he or she first became aware of the claimed condition and appellant provided the dates August 18, 2007 and April 16, 2015. Section 12 asks the claimant to provide the date he or she realized when the claimed condition was caused or aggravated by the employment and appellant provided the dates August 18, 2007 and May 6, 2015. Appellant stopped work on May 5, 2015.

In an accompanying undated statement, appellant provided further details of the repetitive letter carrier duties which he felt caused a new occupational right shoulder injury. He indicated that his work task of casing mail, which he performed up to 10 hours per day, required him to reach forward with his right arm and work with his arms above the level of his head. Appellant reported that, on a daily basis, he carried a mailbag weighing up to 35 pounds on his right shoulder, and pushed and pulled mail gurneys weighing more than 100 pounds. He advised that he experienced increased right shoulder pain in October 2014 and that he underwent right shoulder surgery on May 6, 2015.

In a July 17, 2015 letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how his work activities caused, contributed to, or aggravated his claimed medical condition.

In an undated statement received in August 14, 2015, appellant provided additional details about the repetitive duties of his letter carrier job. He indicated that his duties as a letter carrier included casing mail and putting mail into mailboxes (tasks which required reaching out and working above shoulder height), lifting and carrying trays and tubs of mail weighing approximately 25 to 30 pounds, pushing and pulling hampers full of mail and parcels in excess of 100 pounds, lifting parcels of all sizes weighing up to 70 pounds, and taking trays full of flats (weighing 10 to 40 pounds or more) off racks above shoulder height.

Appellant submitted reports from several attending physicians detailing the treatment of his various medical conditions. In two reports dated July 29, 2013, Dr. Alex M. Lam, a Board-certified internist and rheumatologist, diagnosed diffuse arthralgia and primary localized

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<sup>3</sup> The claim was assigned OWCP File No. xxxxxx065.

<sup>4</sup> The Board notes that appellant's prior claim for an August 18, 2007 right shoulder injury is not the subject of the present appeal. Appellant also filed an occupational disease claim in 2013 for joint pain in multiple sites (OWCP File No. xxxxxx181) which is not the subject of the present appeal.

osteoarthritis.<sup>5</sup> In a September 9, 2013 report, Dr. Hugh Fonesca, a Board-certified internist, rheumatologist, and osteopath, described his injection of Lidocaine into appellant's right bicipital tendon and diagnosed diffuse arthralgia, primary localized osteoarthritis, sarcoidosis, Crohn's disease, synovitis, and tenosynovitis.

Beginning in March 2015, appellant received treatment for his right shoulder condition from Dr. Marc Z. Hammerman, a Board-certified orthopedic surgeon. In a March 27, 2015 report, Dr. Hammerman advised that appellant presented complaining of having right shoulder pain for an unspecified period. He reported the findings of his physical examination on that date noting tenderness in the right acromion without effusion or instability. Dr. Hammerman diagnosed right rotator cuff tendinitis/bursitis in the shoulder region, scapular elastofibroma of the right shoulder (with possible tear) as seen on prior diagnostic testing, and degeneration of cervical intervertebral disc.

Appellant submitted an April 10, 2015 magnetic resonance imaging (MRI) scan of appellant's right shoulder which contained an assessment of partial rotator cuff tear, degenerative joint disease of the shoulder region (unspecified whether generalized or localized), labral tear, superior glenoid labrum lesions, and bicipital tenosynovitis.<sup>6</sup> He also submitted a May 6, 2015 report showing that Dr. Hammerman performed right shoulder surgery on that date, including rotator cuff repair involving the supraspinatus muscle, acromioplasty, resection of the distal clavicle, subacromial bursectomy, and arthroscopic labral debridement. The surgery was not approved by OWCP.

In an August 14, 2015 report, Dr. Hammerman indicated that appellant was seen on March 27, 2015 for an initial evaluation of his right shoulder and he described the results of an April 10, 2015 MRI scan of appellant's right shoulder. He reported that the scan revealed 60 to 70 percent articular-sided partial thickness tear involving the supraspinatus, fraying involving the infraspinatus tendon, cystic changes of the humeral head, subscapularis tendinitis, moderate acromion joint degeneration with subacromial spur formation, moderate biceps tendinosis, and labral fraying with a chronic superior anterior to posterior labral tear lesion. Dr. Hammerman indicated that considering appellant's 33 years of employment as a letter carrier with the employing establishment which required a great deal of repetitive motions in both the preparation and delivery of his mail route, it was within all reasonable medical probability there was a causal relationship between his letter carrier duties and the clinical findings. He noted that appellant underwent right shoulder surgery on May 6, 2015 and had been undergoing physical therapy to rehabilitate his right shoulder.

In a September 1, 2015 decision, OWCP denied appellant's claim for a work-related occupational condition based on its finding that it was untimely filed. It noted that appellant had failed to file his claim within three years of August 18, 2007, the date listed on his claim form as

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<sup>5</sup> Appellant reported that he had experienced the arthralgia for two years. Dr. Lam noted that appellant had a past history of hypertension, Crohn's disease, and rheumatoid arthritis.

<sup>6</sup> Appellant also submitted an August 20, 2007 MRI scan of his right shoulder which specifically indicated that no rotator cuff tear, retraction, or atrophy was seen. The scan did show a suspected muscle strain or partial tear involving the anterior head of the deltoid muscle.

the date that he first realized his claimed condition was caused or aggravated by factors of his federal employment.

In a November 25, 2015 letter received on that date, appellant requested reconsideration of OWCP's September 1, 2015 decision. He discussed why he felt that the medical evidence already in the case record supported his claim for a work-related occupational right shoulder injury. Appellant did not submit any additional medical evidence.

In a January 26, 2016 decision, OWCP denied appellant's claim for a work-related occupational right shoulder condition. It modified its September 1, 2015 decision to reflect that appellant filed a timely claim, but found that appellant's claim was denied because he failed to submit sufficient medical evidence to establish causal relationship between his claimed right shoulder injury and the accepted factors of federal employment, *i.e.*, his letter carrier duties which included casing mail, carrying a mailbag, delivering mail, and pushing mail gurneys.

In a May 6, 2016 letter, received on that date, appellant requested reconsideration of OWCP's January 26, 2016 decision. He indicated that an enclosed May 4, 2016 report from Dr. Hammerman supported his claim for a work-related right shoulder condition.

In his May 4, 2016 report, Dr. Hammerman noted that he had reviewed an August 20, 2007 MRI scan of appellant's right shoulder that was negative for rotator cuff tear, retraction, or muscle atrophy. He indicated that the August 20, 2007 MRI scan showed a muscle strain or partial tear involving the anterior head of the deltoid muscle and noted that office notes showed that appellant was apparently diagnosed with biceps tendinitis and rotator cuff tendinitis. However, Dr. Hammerman posited that these conditions were not workers' compensation injuries and were not related to the current right shoulder problem that appellant had. He advised that appellant was seen on March 21, 2015 for an initial evaluation of his right shoulder and he discussed the April 10, 2015 MRI scan of appellant's right shoulder and the May 6, 2015 right shoulder surgery. Dr. Hammerman noted that appellant's duties as a letter carrier included casing mail and putting mail into mailboxes (tasks which required reaching out and working above shoulder height), lifting and carrying trays and tubs of mail weighing approximately 25 to 30 pounds, pushing and pulling hampers full of mail and parcels in excess of 100 pounds, lifting parcels of all sizes weighing up to 70 pounds, and taking trays full of flats (weighing 10 to 40 pounds or more) off racks above shoulder height. He opined that, considering appellant's 34 years of employment as a letter carrier with the employing establishment which required a great deal of repetitive motions including lifting tubs and trays of mail and repetitive motion of reaching above shoulder height to case mail, it was within all reasonable medical probability there was a causal relationship between his letter carrier duties and the clinical findings. Dr. Hammerman indicated that, if appellant could work with a system that allowed him to avoid excessive repetitive stretch maneuvers, there would be less stress across his right rotator cuff repair and he would be able to perform his work activities for longer periods.

In a June 2, 2016 decision, OWCP denied modification of its January 26, 2016 decision denying appellant's claim for a work-related occupational right shoulder condition. It found that appellant failed to submit sufficient medical evidence to establish a causal relationship between his claimed right shoulder condition and the accepted employment factors, *i.e.*, his letter carrier

duties which included casing mail, carrying a mailbag, delivering mail, and pushing mail gurneys.

In an August 2, 2016 letter, received on that date, appellant, through his representative, requested reconsideration of OWCP's June 2, 2016 decision. The representative argued that Dr. Hammerman's May 4, 2016 report established appellant's claim for a work-related occupational right shoulder condition.

In a December 20, 2016 decision, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that the argument submitted by appellant's representative was repetitious in nature.

In a March 28, 2017 letter, received on that date, appellant, through his representative, requested reconsideration of OWCP's June 2, 2016 decision.

Appellant submitted a March 20, 2017 report from Dr. Martin E. Hale, an attending Board-certified orthopedic surgeon. Dr. Hale indicated that, beginning in January 2012, he initially treated appellant for complaints of neck pain radiating to the shoulders, numbness and tingling in the hands, thoracolumbar pain without radiation into the lower extremities, and bilateral knee pain. He noted that in 2013 appellant started complaining of right shoulder pain, which he related to his overhead casing at work, and indicated that he later complained of having left shoulder pain caused by using his left shoulder to compensate for his right shoulder pain. Dr. Hale noted that appellant's right shoulder condition worsened to the point where he needed right shoulder mini-arthrotomy and indicated that appellant was still recovering from the surgery. He posited that, based on appellant's letter regarding his duties as a carrier, his continued work with overhead reaching for casing as well as repetitive reaching and twisting of his arm during the delivery portion of his route "are significantly contributing to his continuing shoulder problems." Dr. Hale found that it was more likely than not that appellant's injuries were a direct result of his work-related activities as a letter carrier with more than 50 percent of the injury being referable to his occupation.

In a June 16, 2017 decision, OWCP denied modification of its June 2, 2016 decision denying appellant's claim for a work-related occupational right shoulder condition. It found that appellant failed to submit sufficient medical evidence to establish causal relationship between his claimed right shoulder condition and the accepted employment factors, *i.e.*, his letter carrier duties which included casing mail, carrying a mailbag, delivering mail, and pushing mail gurneys.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are

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<sup>7</sup> *Supra* note 2.

causally related to the employment injury.<sup>8</sup> To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.<sup>9</sup> An employee must also establish that such event, incident, or exposure caused an injury.<sup>10</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>11</sup>

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.<sup>12</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>13</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.<sup>14</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established employment factors.<sup>15</sup>

### ANALYSIS

On June 29, 2015 appellant filed an occupational disease claim alleging that he sustained a right shoulder injury due to performing his work duties as a letter carrier over a period of time. In decisions dated January 26, June 2, 2016, and June 16, 2017, OWCP denied appellant’s claim because he failed to submit sufficient medical evidence to establish causal relationship between his claimed right shoulder condition and the accepted employment factors, *i.e.*, his letter carrier

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<sup>8</sup> 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

<sup>10</sup> *Id.*

<sup>11</sup> *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>12</sup> 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

<sup>13</sup> *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>14</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

<sup>15</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

duties which included casing mail, carrying a mailbag, delivering mail, and pushing mail gurneys.<sup>16</sup>

The Board finds that appellant has not met his burden of proof to establish an occupational right shoulder condition due to factors of his federal employment.

In an August 14, 2015 report, Dr. Hammerman indicated that appellant was seen relative to March 27, 2015 for an initial evaluation of his right shoulder and described the results of an April 10, 2015 MRI scan of his right shoulder. He also referenced appellant's May 6, 2015 right shoulder surgery. Dr. Hammerman reported that the MRI scan revealed a 60 to 70 percent articular-sided partial thickness tear involving the supraspinatus, fraying involving the infraspinatus tendon, cystic changes of the humeral head, subscapularis tendinitis, moderate acromion joint degeneration with subacromial spur formation, moderate biceps tendinosis, and labral fraying with a chronic superior anterior to posterior labral tear lesion. He noted that, considering appellant's 33 years of employment as a letter carrier with the employing establishment which required a great deal of repetitive motions in both the preparation and delivery of his mail route, it was within all reasonable medical probability there was causal relationship between his letter carrier duties and the clinical findings.

The Board notes that Dr. Hammerman's August 14, 2015 report is of limited probative value regarding appellant's claimed work-related injury because he did not provide adequate medical rationale in support of his opinion that a specific medical condition was caused or aggravated by the reported employment activities. Dr. Hammerman indicated that there was a causal relationship between appellant's employment activities and the "clinical findings" but he did not identify the specific diagnosed conditions which he felt were related to the employment activities or describe the medical mechanism through which the activities could have caused or aggravated such specific conditions. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>17</sup> Dr. Hammerman did not cite specific objective findings on physical examination or diagnostic testing which supported his opinion on causal relationship. He provided an extremely limited history of appellant's right shoulder problems and, therefore, his August 14, 2015 report is of limited probative value regarding appellant's claimed work-related injury for the further reason that it is not based on a complete factual and medical history. The Board has held that an opinion on a given medical question is of limited probative value if it is not based on a complete and accurate factual and medical history.<sup>18</sup>

In a May 4, 2016 report, Dr. Hammerman discussed the April 10, 2015 MRI scan of appellant's right shoulder and the May 6, 2015 right shoulder surgery. He indicated that

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<sup>16</sup> In a September 1, 2015 decision, OWCP had denied appellant's claim for an occupational right shoulder condition because it was untimely filed. In its January 26, 2016 decision, OWCP modified its September 1, 2015 decision to reflect that appellant filed a timely claim, but found that appellant's claim was denied because he failed to submit sufficient medical evidence to establish causal relationship.

<sup>17</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

<sup>18</sup> See *supra* note 14.

appellant's duties as a letter carrier included casing mail and putting mail into mailboxes (tasks which required reaching out and working above shoulder height), lifting and carrying trays and tubs of mail weighing approximately 25 to 30 pounds, pushing and pulling hampers full of mail and parcels in excess of 100 pounds, lifting parcels of all sizes weighing up to 70 pounds, and taking trays full of flats (weighing 10 to 40 pounds or more) off racks above shoulder height. Dr. Hammerman opined that, considering appellant's 34 years of employment as a letter carrier with the employing establishment, which required a great deal of repetitive motions including lifting tubs and trays of mail and repetitive motion of reaching above shoulder height to case mail, it was within all reasonable medical probability that there was causal relationship between his letter carrier duties and the clinical findings.

The Board notes that, in his May 4, 2016 report, Dr. Hammerman provided a more detailed description of appellant's work duties, but he still did not provide sufficient medical rationale to establish causal relationship between these duties and the claimed right shoulder condition. Dr. Hammerman's May 4, 2016 report is of limited probative value on the relevant issue of this case because he did not provide adequate medical rationale explaining how the described employment activities could have caused or aggravated appellant's right shoulder condition.<sup>19</sup> His opinion on causal relationship is vague and generalized in nature. Dr. Hammerman simply listed appellant's work duties and concluded that they caused the "clinical findings." However, he did not specify which clinical findings were related to appellant's employment duties. Dr. Hammerman did not indicate how often appellant performed the listed employment activities, correlate the activities to specific objective findings on physical examination and diagnostic testing, or describe the medical processes through which the activities could have been competent to cause or aggravate a specific diagnosed condition. He did not provide an opinion which included a comprehensive account of the prior treatment for appellant's right shoulder problems. Therefore, Dr. Hammerman's May 4, 2016 report is of limited probative value regarding appellant's claimed work-related right shoulder condition for the further reason that it is not based on a complete factual and medical history.<sup>20</sup>

In a March 20, 2017 report, Dr. Hale, an attending physician, noted that in 2013 appellant started complaining of right shoulder pain, which he related to his overhead casing at work, and indicated that he later complained of having left shoulder pain caused by using his left shoulder to compensate for his right shoulder pain. He noted that appellant's right shoulder condition worsened to the point where he needed right shoulder mini-arthrotomy and indicated that appellant was still recovering from the surgery. Dr. Hale posited that, based on appellant's letter regarding his duties as a carrier, his continued work with overhead reaching for casing as well as repetitive reaching and twisting of his arm during the delivery portion of his route "are significantly contributing to his continuing shoulder problems." He advised that it was more likely than not that appellant's injuries were a direct result of his work-related activities as a letter carrier with more than 50 percent of the injury being referable to his occupation.

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<sup>19</sup> *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value if it lacks medical rationale in support of an opinion on causal relationship).

<sup>20</sup> *E.R.*, Docket No. 15-1046 (issued November 12, 2015).



The Board finds that Dr. Hale's March 20, 2017 report is of limited probative value regarding appellant's claimed work-related occupational right shoulder condition because he did not provide adequate medical rationale explaining how appellant's employment activities could have caused or aggravated his right shoulder condition.<sup>21</sup> Dr. Hale did not describe appellant's work duties in any detail or explain the medical processes through which the activities could have been competent to cause or aggravate a specific diagnosed condition. He did not present objective findings on physical examination or diagnostic testing which supported his opinion on causal relationship, identify the specific diagnosed conditions which he felt were work related, or provide a complete factual and medical history.<sup>22</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a right shoulder injury due to factors of his federal employment.

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<sup>21</sup> D.R., Docket No. 16-0528 (issued August 24, 2016).

<sup>22</sup> On appeal appellant's representative argues that appellant's attending physicians provided medical rationale in support of their opinions that appellant sustained a work-related occupational condition of his right shoulder. However, the Board has explained why the opinions of appellant's attending physicians did not contain adequate medical rationale on the matter of causal relationship.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board